THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No. 20351 of 1994.

DATED: 14-11-2006

Between:

The Management of Sri Venkateswara Grameena
Bank, rep. by its Chairman,
Chittoor.

…Petitioner

and

Industrial Tribunal, Hyderabad, rep. byh its
Presiding Officer and another

…Respondents.

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.No. 20351 of 1994.

Oral order:

This writ petition by Sri Venkateswara Grameena Bank is directed against the award dated 18-3-1994 of the Industrial Tribunal No.I, Hyderabad in I.D.No.68 of 1989. The 2nd respondent-Union sought reference of a dispute under Section 10 (1)(d), (2)(a) of the Industrial Disputes Act, 1947 (for short 'the Act') to the Tribunal. A reference was duly made by the appropriate Government, the Union of India which reads:

> "Whether the action of the management of Sri Venkateswara Grameena Bank, Chittoor in terminating the services of Sri B.Srinivasulu, ex-worker from 1-10-1987 is justified? If not, to what relief the workman concerned is entitled?

The reference was numbered as I.D.No.68 of 1989. The factual substratum of the dispute is that one B.Srinivasulu was appointed as a Sweeper-cum-Messenger in the writ petitioner Bank on 8-12-1983, worked continuously without any break or interruption up to 1-10-1987 on which later date he was disengaged without enquiry, prior notice or after following the substance and procedure under Section 25-F of the Act. In the context, relief was sought for a declaration that the action of the writ petitioner-Bank in terminating the service of Srinivasulu is illegal and for his reinstatement with full back wages, continuity of services and all other ancillary and incidental benefits.

The Bank resisted the relief claimed by the workman contending that Srinivasulu was engaged purely on a temporary, part time basis

as Sweeper-cum-Messenger on daily wages; and that in an enquiry conducted upon complaints of forgery and spurious loans particularly in Integrated Rural Development Programme loans, the staff of the Bank detected certain cases of forgery etc., and on further enquiry, a confessional letter was received by the Bank from one of the loanees on 9-9-1987; this letter was entrusted to Srinivasulu to be handed over in the Branch, but Srinivasulu deliberately, intentionally and with a bad motive reported the loss of the letter on 10-9-1987 with a view to help the involved loanees. This conduct of Srinivasulu was enquired into, he was given an opportunity to explain. After he was questioned and shown the material available with the Bank against Srinivasulu gave a written explanation on 26-9-1987. After perusing the material against him and after considering the same, the Bank concluded that Srinivasulu was intentionally and grossly negligent in handling an important paper obtained by the Bank and had falsely invented the theory of loss of the letter. Another allegation against Srinivasulu was that he had availed a loan in the Mahal Branch of the Bank on 13-10-1984 on the basis of a false declaration about his properties and business activities and thereby misrepresented and cheated the Bank for financial gain. Srinivasulu is stated to have confessed in his written explanation on 26-9-1987 that he neither owned any properties nor conducted any business for which he availed the loan. As Srinivasulu was found to have a delinquent conduct and was "proved to be involved in cheating and negligence" he was disengaged with effect from 1-10-1987. The respondent Bank also contended before the Tribunal that in view of Srinivasulu's confessional letter dated 26-9-1987 there was no need for an enquiry.

Before the Tribunal, the workman concerned B.Srinivasulu examined himself as W.W-1 while on behalf of the management one M.Jayaram Naik was examined as M.W-1. The complaint given by Srinivasulu to the Assistant Labour Commissioner, Vijayawada was

marked as Ex.W1 and whereas M1 to M5 were marked on behalf of the Bank; being the application for loan purportedly by Srinivasulu, a promissory note by the petitioner to Srinivasulu, a loan agreement entered between Srinivasulu and Mahal Branch and Ex.M4 being the Telugu Statement of Srinivasulu wherein he is alleged to have confessed to making a false statement of his assets for obtaining a loan from the Mahal Branch of the Bank.

According to Ms. Uma, learned counsel appearing for the Bank, the management of the Bank conducted an enquiry against Srinivasulu. The characteristics of the so-called enquiry conducted by the management of the Bank as narrated by the learned counsel for the petitioner being unique require to be set out. According to the petitioner, the management called upon Srinivasulu to explain the various species of his misconduct already adverted to. Some material in purported support of the allegations was also shown to Srinivasulu. In respect of one of the allegations, namely, availing loan from the Mahal Branch, Srinivasulu is stated to have submitted an explanation dated
26-9-1987 which is allegedly a confession of Srinivasulu's ineligibility to avail the loan and yet availing the loan on the basis of false representations. On the basis of that material, the management is alleged to have come to a conclusion that the continuance of Srinivasulu in the services of the Bank is undesirable, having regard to the bank's standards of integrity expected of its employees. Consequently the Bank choose the benign course of "disengagement" of Srinivasulu from service on 1-10-1987 after his having put in four years of continuous and uninterrupted service which normally would entitle Srinivasulu to the benefits under Section 25-F of the Act; which benefits were admittedly not extended while disengaging him from service on 1-10-1987.

By no stretch oflanguage or logic could the procedure adopted by

the Bank against Srinivasulu be characterized as an enquiry. There was no show-cause notice issued to Srinivasulu; no record of oral or documentary evidence was made, no conclusion of the enquiry officer or disciplinary authority as to the guilt of Srinivasulu is recorded and no formal order of termination of services for misconduct is recorded.

From the statement in opposition by the management in I.D.No.68 of 1989 and the contentions of the Bank before this Court, the inference and conclusion is irresistible that the alleged misconduct of Srinivasulu was the foundation for his "disengagement" from 1-10-1987. Such being the circumstance, the termination is punitive in character and could not have been ordered by a State instrumentality without following even the minimum rigor of a disciplinary inquiry. The so-called process adopted by the Bank against Srinivasulu for the punitive and stigmatic removal from service, albeit a temporary service, is a vagrant process that must perish on even a minimum judicial scrutiny.

If the misconduct is not the foundation for Srinivasulu's disengagement on 1-10-1987 even ex-hypothesi, than the disengagement of Srinivasulu on 1-10-1987, after putting in four years of continuous and uninterrupted service (as claimed and not rebutted) would entitle Srinivasulu to the benefits under Section 25-F of the Act which admittedly have not been extended to him. The termination would thus fall foul of the statutory prohibition and must perish for that reason.

On analysis, the disengagement of Srinivasulu on 1-10-1987 is beset with the fatal infirmity of violation of the provisions of Section 25-F of the Act, as there is no report of enquiry and no order of termination.

Ms. Uma, learned counsel for the petitioner-Bank would urge

another defence to the action of the management. The syllogism runs: Since Srinivasulu was engaged without a formal order of appointment he can be punitively disengaged without a formal order and such oral termination for misconduct characterized by the Bank as "disengagement" does not violate any law. This is a contention that is stated to be rejected for a fundamental fallacy. The petitioner is an instrumentality of the State and this status admitted and established too. As such, the petitioner is obligated to comply with the constitutional disciple of Article 14 of the Constitution of India and in the matter of terminating the services of a workman who has the specified protections under the statutory architecture of Section 25-F of the Act. A State instrumentality must follow a substance and procedure of disciplinary inquiries which reflects its commitment and fidelity to constitutional obligations. Such fidelity is achieved by conducting an enquiry against an alleged delinquent workman in a manner that corresponds with the minimum forensic requirement of a disciplinaryinquiry. These include the drawing up of a charge and communication thereof to the delinquent; affording an opportunity for response and a reasonable opportunity at that; if there is a confession recording of that fact; if there is no confession, marshalling of evidenceto support the allegation of misconduct; recording of such evidence at the inquiry; and recording the concluion of guilt on each charge of misconduct duly analyzing the evidence in support of the conclusion on each charge. None of these minimal indicia of a disciplinary inquiry are on record. The Bank cannot escape this constitutional and legal responsibility. Order of appointment there may not be. An order of punitive termination, there must be. There is the settled law. There can be no oral punitive dismissal.

There are no merits in the writ petition. The writ petition is dismissed with costs of Rs.2,500/- payable by the petitioner to the workman within four weeks from the date of receipt of a copy of this

order apart from other benefits to which he is entitled to under the orders of the Industrial Tribunal dated

28-3-1994 in I.D.No.68 of 1989.

GODA RAGHURAM, J

14th November, 2006.

GRR